

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SUSAN PINSKY,

Plaintiff,

- against -

JP MORGAN CHASE & CO.,

Defendant.  
----- X

07 Civ. 3328 (CM)

REPLY DECLARATION OF  
ARTHUR Z. SCHWARTZ  
PURSUANT TO RULE 56(F)

Arthur Z. Schwartz declares, under penalty of perjury, that the following is true and correct:

1. Plaintiff has filed, today, a declaration from plaintiff attesting to the facts underlying plaintiff's application under Rule 56(F).
2. Ms. Pinsky's declaration, when examined in contrast to Mr. Lieberman's declaration opposing the need for discovery prior to litigation of defendant's summary judgment motion, demonstrates exactly why discovery is needed:
  - a. There is a factual issue about whether the June 2005 release became effective in June 2005 or upon the termination of plaintiff's leave of absence.
  - b. There is a factual issue about whether Ms. Pinsky's leave of absence ended and whether it was ended appropriately.
  - c. There is a factual issue about whether the cutoff of Ms. Pinsky's disability benefits was appropriate.

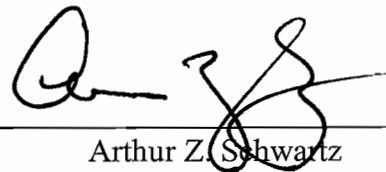
d. There is a factual issue about whether Ms. Pinsky was capable of returning to work in July (one date used by defendant), in September (another date used by defendant), or at this time.

e. There is a factual issue about whether there were job opportunities which Ms. Pinsky could have taken advantage of prior to July 18, 2005 which would have made the Release Agreement null and void.

f. There is a factual issue about whether the transfer of Ms. Pinsky to another position prior to July 18, 2005 would have voided the Release Agreement.

3. Clearly, the Motion for Summary Judgment was filed prematurely and should have awaited the completion of discovery largely addressed to the factual issues set forth above. Plaintiff's request to postpone the response to the motion or strike it entirely is wholly meritorious.

Dated: New York, New York  
October 4, 2007



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Arthur Z. Schwartz